

SPENCER HOSIE (CA Bar No. 101777)  
shosie@hosielaw.com  
BRUCE WECKER (CA Bar No. 078530)  
bwecker@hosielaw.com  
GEORGE F. BISHOP (CA Bar No. 89205)  
gbishop@hosielaw.com  
HOSIE RICE LLP  
188 The Embarcadero, Suite 750  
San Francisco, CA 94105  
(415) 247-6000 Tel.  
(415) 247-6001 Fax

Attorneys for Plaintiff  
**BACKWEB TECHNOLOGIES, LTD.**

*Additional Attorneys Listed on Signature Page*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

BACKWEB TECHNOLOGIES, LTD..

Case No. cy 09-1224 cw

Plaintiff,

## **STIPULATED PROTECTIVE ORDER**

MICROSOFT CORPORATION AND  
SYMANTEC CORPORATION

## Defendants

## 1. PURPOSES AND LIMITATIONS.

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or

1 items that are entitled under the applicable legal principles to treatment as confidential. The parties  
2 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order  
3 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
4 procedures that must be followed and reflects the standards that will be applied when a party seeks  
5 permission from the court to file material under seal.

6       2. DEFINITIONS.

7           2.1     Party: any party to this action, including all of its officers, directors,  
8 employees, consultants, retained experts, and outside counsel (and their support staff).

9           2.2     Disclosure or Discovery Material: all items or information, regardless of the  
10 medium or manner generated, stored, or maintained (including, among other things,  
11 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
12 responses to discovery in this matter.

13           2.3     “Confidential” Information or Items: information (regardless of how  
14 generated, stored or maintained) or tangible things that qualify for protection under standards  
15 developed under Fed. R. Civ. P. 26(c) and shall include any document, portions of documents,  
16 information or other things furnished by any party, including third-parties, answers to  
17 interrogatories, responses to requests to produce documents or other things, responses to request  
18 for admissions, depositions, transcripts of depositions, all copies, extracts, summaries,  
19 compilations, designations and portions thereof, and technical or commercial information derived  
20 therefrom deemed by any party to be its confidential information such as confidential research,  
21 development, proprietary, business or commercial information, whether embodied in physical  
22 objects, documents, or the factual knowledge of persons.

23           2.4     “Highly Confidential – Attorneys’ Eyes Only” Information or Items: any  
24 document, portions of documents, information or other things furnished by any party, including  
25 third-parties, answers to interrogatories, responses to requests to produce documents or other  
26 things, response to request for admissions, depositions, transcripts of depositions, all copies,  
27 extracts, summaries, compilations, designations and portions thereof, and technical or commercial  
28 information derived therefrom; which may constitute extremely confidential, proprietary or

1 sensitive information and the Producing Party reasonably believes that the disclosure of such  
2 Discovery Material is likely to cause substantial economic harm or significant competitive  
3 disadvantage to the Producing Party. Examples of the type of information, if non-public, that  
4 may be designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" include: (1)  
5 the names, or other information tending to reveal the identities, of a party's suppliers, present or  
6 prospective customers, or distributors; (2) information relating to pending patent applications; (3)  
7 financial information of a party, including but not limited to identifying the number of products  
8 sold, total dollar value of sales products, and profit margins for products; (4) non-public financial  
9 information; (5) licensing information; (6) software development plans, software flow diagrams,  
10 or internal presentations relating to software; (7) information constituting product specifications  
11 and/or regarding the technology used to make the accused products; (8) technical information and  
12 technical reports of a party, including schematic designs, manufacturing and engineering  
13 drawings, engineering notebooks, internal technical communications, specifications, research  
14 notes and materials, technical reference materials, and other non-public technical descriptions  
15 and/or depictions of relevant technology; (8) business and/or marketing plans or analyses of a  
16 party; (9) price lists and/or pricing information, (10) customer lists, and (11) trade secrets.

17           2.5     Receiving Party: a Party that receives Disclosure or Discovery Material  
18 from a Producing Party.

19           2.6     Producing Party: a Party or non-party that produces Disclosure or  
20 Discovery Material in this action.

21           2.7     Designating Party: a Party or non-party that designates information or  
22 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or  
23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

24           2.8     Protected Material: any Disclosure or Discovery Material that is  
25 designated as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
26 ONLY."

27           2.9     Outside Counsel: attorneys who are not employees of a Party but who  
28 are retained to represent or advise a Party in this action.

1           2.10   House Counsel: attorneys who are employees of a Party.

2           2.11   Counsel (without qualifier): Outside Counsel and House Counsel (as well  
3 as their support staffs).

4           2.12   Expert: a person with specialized knowledge or experience in a  
5 matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
6 expert witness or as a consultant in this action and who is not a past or a current employee of a  
7 Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to  
8 become an employee of a Party or a competitor of a Party's. This definition includes a  
9 professional jury or trial consultant retained in connection with this litigation.

10          2.13   Professional Vendors: persons or entities that provide litigation support  
11 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
12 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
13 subcontractors.

14          2.14   Patents-In-Suit: U.S. Patent Nos. 5,913,040; 6,317,789; 6,539,429;  
15 6,374,289; 6,493,758, and subsequently sued upon patents, if any.

16          3.      SCOPE.

17          The protections conferred by this Stipulation and Order cover not only Protected Material (as  
18 defined above), but also any information copied or extracted there from, as well as all copies,  
19 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
20 parties or counsel to or in court or in other settings that might reveal Protected Material.

21          4.      DURATION.

22          Even after the termination of this litigation, the confidentiality obligations imposed by this  
23 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
24 otherwise directs.

25          5.      DESIGNATING PROTECTED MATERIAL.

26          5.1     Exercise of Restraint and Care in Designating Material for Protection.

27          Each Party or non-party that designates information or items for protection under this Order must  
28 take care to limit any such designation to specific material that qualifies under the appropriate

1 standards. A Designating Party must take care to designate for protection only those materials,  
 2 documents, items, or oral or written communications that qualify so that other material,  
 3 documents, items or communications for which protection is not warranted are not swept  
 4 unjustifiably within the ambit of this Order.

5           If it comes to a Party's or a non-party's attention that information or items that  
 6 it designated for protection do not qualify for protection at all, or do not qualify for the  
 7 level of protection initially asserted, that Party or non-party must promptly notify all other parties  
 8 that it is withdrawing the mistaken designation.

9           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
 10 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
 11 material that qualifies for protection under this Order must be clearly so designated before the  
 12 material is disclosed or produced.

13           Designations in conformity with this Order requires:

14           (a)     for information in documentary form (apart from transcripts of  
 15 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
 16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on  
 17 each page that contains protected material.

18           A Party or non-party that makes original documents or materials  
 19 available for inspection need not designate them for protection until after the inspecting Party  
 20 has indicated which material it would like copied and produced. During the inspection and  
 21 before the designation, all of the material made available for inspection shall be deemed  
 22 “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES ONLY.” After the inspecting Party has  
 23 identified the documents it wants copied and produced, the Producing Party must determine  
 24 which documents, or portions thereof, qualify for protection under this Order, then, before  
 25 producing the specified documents, the Producing Party must affix the appropriate legend  
 26 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the  
 27 top of each page that contains Protected Material.

28

11           Additionally, if not so designated at the deposition, each party shall have until fourteen  
12           (14) calendar days after receipt of the deposition transcript within which to inform the other  
13           parties to the action of the portions of the transcript to be designated as “CONFIDENTIAL” or  
14           “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The right to make such  
15           designation shall be waived unless made within the fourteen (14) day period unless the parties  
16           specifically agree otherwise. Prior to such designation, or expiration of the fourteen (14) day  
17           period, the entire deposition transcript shall be deemed as “HIGHLY CONFIDENTIAL –  
18           ATTORNEYS’ EYES ONLY” information. Transcripts of testimony, or portions thereof,  
19           designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
20           ONLY” shall be filed only under seal, until further order of the Court.

21 Transcript pages containing Protected Material must be separately bound by the court  
22 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty  
24 offering or sponsoring the witness or presenting the testimony.

1               5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
 2 to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
 3 – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to  
 4 secure protection under this Order for such material. If material is appropriately designated as  
 5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” after the  
 6 material was initially produced, the Receiving Party, on timely notification of the designation, must  
 7 make reasonable efforts to assure that the material is treated in accordance with the provisions of  
 8 this Order.

9               6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS.

10              6.1     Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
 11 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
 12 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
 13 its right to challenge a confidentiality designation by electing not to mount a challenge promptly after  
 14 the original designation is disclosed.

15              6.2     Meet and Confer. A Party that elects to initiate a challenge to a  
 16 Designating Party’s confidentiality designation must do so in good faith and must begin the process  
 17 by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
 18 with counsel for the Designating Party. In conferring, the challenging Party must explain the  
 19 basis for its belief that the confidentiality designation was not proper and must give the  
 20 Designating Party an opportunity to review the designated material, to reconsider the  
 21 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
 22 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
 23 has engaged in this meet and confer process first.

24              6.3     Judicial Intervention. A Party that elects to press a challenge to a  
 25 confidentiality designation after considering the justification offered by the Designating Party may  
 26 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
 27 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.  
 28 Each such motion must be accompanied by a competent declaration that affirms that the movant

1 has complied with the meet and confer requirements imposed in the preceding paragraph and that  
 2 sets forth with specificity the justification for the confidentiality designation that was given by the  
 3 Designating Party in the meet and confer dialogue. The burden of persuasion in any such challenge  
 4 proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties  
 5 shall continue to afford the material in question the level of protection to which it is entitled  
 6 under the Producing Party's designation.

7       7. ACCESS TO AND USE OF PROTECTED MATERIAL.

8       7.1     Basic Principles. A Receiving Party may use Protected Material that is  
 9 disclosed or produced by another Party or by a non-party in connection with this case only for  
 10 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
 11 disclosed only to the categories of persons and under the conditions described in this Order.  
 12 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
 13 section 11, below (FINAL DISPOSITION). Protected Material must be stored and maintained  
 14 by a Receiving Party at a location and in a secure manner that ensures that access is limited to the  
 15 persons authorized under this Order.

16       7.2     Disclosure of "CONFIDENTIAL" Information or Items. Unless  
 17 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
 18 may disclose any information or item designated "CONFIDENTIAL" only to:

19               (a)     the Receiving Party's Outside Counsel of record in this action, as well  
 20 as employees of said Counsel to whom it is reasonably necessary to disclose the information  
 21 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
 22 attached hereto as Exhibit A;

23               (b)     no more than five (5) officers, directors, and employees (including  
 24 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation  
 25 provided such person has signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

26               (c)     experts (as defined in this Order) of the Receiving Party to whom  
 27 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
 28 Bound by Protective Order" (Exhibit A)

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom

3 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
4 Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is

6 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"

7 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal

Protected Material must be separately bound by the court reporter and may not be disclosed to

anyone except as permitted under this Stipulated Protective Order;

10 (g) the author of the document, the original source of the

11 information, or an employee of the Producing Party who would have access to information of  
12 that level of confidentiality during the normal course of his or her duties.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

14 Information or Items. Unless otherwise ordered by the court or permitted in writing by the

15 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY

16 | CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(c) Experts (as defined in this Order) (1) to whom disclosure is

26 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by

27 Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4,

28 below, have been followed:

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom

3 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
4 Bound by Protective Order” (Exhibit A); and;

5 (f) the author of the document or the original source of the information,  
6 or an employee of the Producing Party who would have access to information of that level of  
7 confidentiality during the normal course of his or her duties.

8           7.4     Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –  
9     ATTORNEYS’ EYES ONLY” Information or Items to “Experts”.

1      Expert may file a motion as provided in Civil Local Rule 7 (and in accordance with Civil Local  
2      Rule 79-5 applicable) seeking permission from the court to do so. Any such motion must  
3      describe the circumstances with specificity, set forth in detail the reasons for which the disclosure to  
4      the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and  
5      suggest any additional means that might be used to reduce that risk. In addition, any such  
6      motion must be accompanied by a competent declaration in which the movant describes the  
7      parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and  
8      confer discussions) and sets forth the reasons advanced by the Designating Party for its refusal to  
9      approve the disclosure. In any such proceeding the Party opposing disclosure to the Expert shall  
10     bear the burden of proving that the risk of harm that the disclosure would entail (under the  
11     safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to  
12     its Expert.

13                7.5      Prosecution Bar. Notwithstanding any other provision of this Order,  
14      absent the written consent of the Producing Party, any individual that accesses Protected Material  
15      (unless such access is strictly limited to financial documentation) shall not directly or indirectly  
16      be involved in the prosecution of patent applications materially relating to the subject matter of  
17      the Patents-In-Suit or covering the subject matter of any such Protected Material produced by a  
18      different party, including without limitation the drafting or amending of patent claims (or  
19      supervision thereof), relating to the subject matter of the Patents-In-Suit or any such Protected  
20      Material produced by a different party, before any foreign or domestic agency, including the  
21      United States Patent and Trademark Office. This prohibition on patent prosecution shall begin  
22      when the affected individual first accesses Protected Material and shall end six months after the  
23      final resolution of this action, including all appeals. Absent the written consent of the Producing  
24      Party, any individual that accesses Protected Material (unless such access is strictly limited to  
25      financial documentation) shall not directly or indirectly be involved in any reexamination or  
26      reissue proceeding involving the Patents-In-Suit, before any foreign or domestic agency,  
27      including the United States Patent and Trademark Office. Consent under this provision shall not  
28      unreasonably be withheld.

1           8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2 OTHER LITIGATION.

3           If a Receiving Party is served with a subpoena or an order issued in other litigation that  
4 would compel disclosure of any information or items designated in this action as  
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the  
6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
7 and in no event more than three court days after receiving the subpoena or order. Such notification  
8 must include a copy of the subpoena or court order.

9           The Receiving Party also must immediately inform in writing the Party who caused the  
10 subpoena or order to issue in the other litigation that some or all the material covered by the  
11 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
12 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
13 caused the subpoena or order to issue.

14           The purpose of imposing these duties is to alert the interested parties to the existence of  
15 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
16 protect its confidentiality interests in the court from which the subpoena or order issued. The  
17 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
18 confidential material—and nothing in these provisions should be construed as authorizing or  
19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20           9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

21           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
22 Protected Material to any person or in any circumstance not authorized under this Stipulated  
23 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
24 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected  
25 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
26 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
27 Agreement to Be Bound" that is attached hereto as Exhibit A.

28

1           10.     FILING PROTECTED MATERIAL. Without written permission from the  
2 Designating Party or a court order secured after appropriate notice to all interested persons, a  
3 Party may not file in the public record in this action any Protected Material. A Party that seeks to  
4 file under seal any Protected Material must comply with Civil Local Rule 79-5.

5           11.     FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the  
6 Producing Party, within sixty days after the final termination of this action, each Receiving Party  
7 must return all Protected Material to the Producing Party. As used in this subdivision, "all  
8 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of  
9 reproducing or capturing any of the Protected Material. With permission in writing from the  
10 Designating Party, the Receiving Party may destroy some or all of the Protected Material  
11 instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving  
12 Party must submit a written certification to the Producing Party (and, if not the same person or  
13 entity, to the Designating Party) by the sixty day deadline that identifies (by category, where  
14 appropriate) all the Protected Material that was returned or destroyed and that affirms that the  
15 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of  
16 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel  
17 are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal  
18 memoranda, correspondence or attorney work product, even if such materials contain Protected  
19 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
20 this Protective Order as set forth in Section 4 (DURATION), above.

21           12.     PRIVILEGE/WORK PRODUCT.

22           Privileged communications and work product of any attorney or party client herein with  
23 respect to this Litigation that are dated on or after the date of filing of the original Complaint need  
24 not be identified on any privilege log. Any party that inadvertently produces privileged materials  
25 may obtain the return of those materials by promptly notifying the recipient(s) of the privilege  
26 upon learning of the inadvertent production and providing a privilege log for any such materials  
27 that are dated prior to the filing of the original Complaint. Upon receiving written notice (or oral  
28 notice, if notice is provided at a deposition or Court proceeding, with written notice to follow as

1 soon as practicable thereafter) from the producing party that privileged information or work-  
2 product material has been inadvertently produced, the recipient(s) shall gather and return all  
3 copies of the privileged material to the Producing Party, except for any pages containing  
4 privileged markings by the recipient which shall instead be destroyed and certified as such by the  
5 recipient to the Producing Party, and the recipient shall not use such information for any purpose  
6 until further Order of the Court. The inadvertent production of Discovery Material subject to the  
7 attorney-client privilege, the attorney work-product immunity, or other recognized privilege or  
8 protection, will not waive the privilege or protection.

9       13.     DISCOVERY FROM EXPERTS AND CONSULTANTS. The parties agree that  
10 no drafts of expert reports or communications with counsel relating solely to those drafts will be  
11 subject to discovery. No other conversations or communications between counsel and any  
12 testifying expert or between counsel and any consulting expert will be subject to discovery unless  
13 the conversations or communications are relied upon by such experts in formulating opinions that  
14 are presented in reports or trial or deposition testimony in this case. In all other respects, the  
15 parties and their experts shall fully comply with the disclosure requirements of Rule 26(a)(2)(B)  
16 of the Federal Rules of Civil Procedure.

17       14.     MISCELLANEOUS.

18           14.1     Right to Further Relief. Nothing in this Order abridges the right of any  
19 person to seek its modification by the Court in the future.

20           14.2     Right to Assert Other Objections. By stipulating to the entry of this  
21 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
22 producing any information or item on any ground not addressed in this Stipulated Protective  
23 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
24 the material covered by this Protective Order.

25  
26 IT IS SO STIPULATED.  
27  
28

1 Dated: October 7, 2009

---

2 */s/ Bruce Wecker*

3 SPENCER HOSIE (SBN 101777)  
shosie@hosielaw.com  
4 BRUCE WECKER (SBN 078530)  
bwecker@ hosielaw.com  
GEORGE F. BISHOP (SBN 89205)  
gbishop@hosielaw.com  
HOSIE RICE LLP  
188 The Embarcadero, Suite 750  
San Francisco, CA 94105  
Telephone: 415-247-6000  
Facsimile: 415-247-6001

5  
6  
7  
8 Attorneys for Plaintiff  
9 BACKWEB TECHNOLOGIES, LTD.

10 */s/Eric Wesenberg*

11 ERIC L. WESENBERG (SBN 139696)  
ewesenberg@orrick.com  
12 ULYSSES S. HUI (SBN 225521)  
uhui@orrick.com  
HAO (HELEN) LI (SBN 247420)  
hli@orrick.com  
13 ORRICK, HERRINGTON & SUTCLIFFE LLP  
1000 Marsh Road  
Menlo Park, CA 94025  
14 Telephone: 650-614-7400  
Facsimile: 650-614-7401

15  
16 M. PATRICIA THAYER (SBN 90818)  
PTHAYER@ORRICK.COM  
17 ORRICK, HERRINGTON & SUTCLIFFE LLP  
18 THE ORRICK BUILDING, 405 HOWARD  
STREET  
19 SAN FRANCISCO, CA 94105-2669  
TELEPHONE: 415-773-5700  
20 FACSIMILE: 415-773-5759

21 STEPHEN P. MCGRATH (SBN 202696)  
STEVEMCG@MICROSOFT.COM  
22 MICROSOFT CORPORATION  
ONE MICROSOFT WAY  
23 REDMOND, WA 98052-6399  
TELEPHONE: 425-882-8080  
24 FACSIMILE: 425-936-7329

25 ATTORNEYS FOR DEFENDANT  
MICROSOFT CORPORATION

26 */s/ Christopher Freeman*

27 Sean S. Pak (Bar No. 219032)  
seanpak@quinnmanuel.com  
28 QUINN EMANUEL URQUHART OLIVER &

1 HEDGES, LLP  
2 50 California Street, 22nd Floor  
3 San Francisco, CA 94111  
4 Telephone: (415) 875 6600  
5 Facsimile: (415) 875 6700

6 David A. Nelson (Pro Hac Vice)  
7 davenelson@quinnemanuel.com  
8 Christopher Freeman (Pro Hac Vice)  
9 chrisfreeman@quinnemanuel.com  
10 QUINN EMANUEL URQUHART OLIVER &  
11 HEDGES, LLP  
12 250 S. Wacker Dr. Suite 230  
13 Chicago, IL 60606  
14 Telephone: (312) 463-2961  
15 Facsimile: (312) 463-2962

16 Attorneys for Defendant  
17 SYMANTEC CORPORATION

18  
19 I hereby attest pursuant to General Order 45.X.B. that concurrence in the electronic filing  
20 of this document has been obtained from the other signatories.

21 DATED: October 7, 2009

22 /s/ Bruce Wecker

23 \_\_\_\_\_  
24 Bruce Wecker

25 PURSUANT TO STIPULATION IT IS SO ORDERED.  
26

27 10/14/09  
28 Dated: \_\_\_\_\_

29 \_\_\_\_\_  
30 Honorable Claudia Wilken  
31 U.S. DISTRICT COURT JUDGE

## **EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty  
of perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Northern District of California on [date] in the  
case of \_\_\_\_\_ **[insert formal name of the case and the number  
and initials assigned to it by the court]**. I agree to comply with and to be bound by all the  
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the provisions  
of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full address and telephone number] as  
19 my California agent for service of process in connection with this action or any proceedings related  
20 to enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed:

24 Printed name: \_\_\_\_\_

25 || [printed name]

26 | Signature: \_\_\_\_\_

28 ||| OHS West:260723989.1  
10/7/09 10:07 AM